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**AUG 27 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Kenneth R. Wilkes :  
Application No. 10/731,855 : **DECISION ON PETITION**  
Filed: December 8, 2003 :  
Attorney Docket No. :

This is a decision on the petition, filed April 10, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the nonfinal Office action mailed July 21, 2006, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on February 23, 2007.

Petitioner asserts that the Office action dated July 21, 2006 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket

and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition lacks item (3) set forth above.

Accordingly, absent the required evidence to establish nonreceipt of the Office action of July 21, 2006, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.


Further correspondence with respect to this matter should be addressed as follows:

By Mail:                   Mail Stop PETITION  
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By facsimile:           (571) 273-8300  
                              Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

  
Irvin Dingle  
Petition Examiner  
Office of Petitions